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The role and relevance of the UN Convention on the Law of the Non-navigational uses of international watercourses to the EU and its member states

Rieu-Clarke, Alistair S.; Wouters, Patricia; Loures, Flavia

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THE ROLE AND RELEVANCE OF THE UN CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES TO THE EU AND ITS MEMBER STATES

Dr. Alistair S Rieu-Clarke
Prof. Patricia Wouters
UNESCO Centre for Water Law, Policy and Science
University of Dundee

Ms. Flavia Loures
Flavia.Loures@WWFUS.ORG

Please address any comments to either:

a.rieuclarke@dundee.ac.uk, or
Flavia.Loures@wwfus.org

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EXECUTIVE SUMMARY

The United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses (“UN Convention”)¹ is a global instrument to promote the equitable and sustainable development and management of river basins shared by two or more states. The convention was passed by the UN General Assembly in 1997 by a 103-3 vote, but still requires 20 additional ratifications out of 35 that are needed for entry into force. WWF has embarked on an initiative to facilitate dialogue among governments, UN bodies, NGOs, and other actors to promote further ratifications. As part of this initiative, WWF has commissioned regional assessments that analyze the benefits and implications for basin countries of adopting the UN Convention, in light of existing water-related agreements or arrangements or of their absence. This paper focuses on the **European Union (EU) and its Member States**. Among these countries, *Denmark, Finland, Germany, Greece, Hungary, Italy, Latvia, Netherlands, Portugal, Sweden, and United Kingdom, sponsored the convention’s adoption, but only Finland, Germany, Hungary, Netherlands, Portugal, and Sweden are parties to it; Luxembourg is a signatory, but never completed the ratification process; all votes from EU countries were in favour, except for the abstentions from Bulgaria, France, and Spain. No EU country voted against the convention.*²

Most EU countries are heavily reliant on water resources flowing from out with their territory, and it is therefore not surprising that there is a long tradition of conflict and cooperation of Europe’s transboundary waters. Such history has resulted in the adoption of numerous bi-lateral and basin-specific agreements. At the regional level, the 1992 UNECE Helsinki Convention (“ECE Convention”)³ seeks to implement integrated water resources management (IWRM) throughout Europe’s transboundary waters. Adopted in 2000, the EU Water Framework Directive (“WFD”)⁴ aims to prevent further deterioration of water resources in the EU and to reach adequate water quality and quantity status in all of the member states’ inland and coastal waters by 2015. The WFD implements IWRM, calling for the sustainable development of water resources and promoting the integration between land and water management at the catchment level and between water and other major EU policies.

A comparative analysis of both these regional instruments and the UN Convention finds that there are *no conflicts* between their provisions. However, differences do exist in the scope of each instrument and in the extent of the obligations placed upon the respective parties. Such differences

¹ United Nations Convention on the Law of Non-Navigational Uses of International Watercourses, UN Doc. A/51/869, 21 May 1997, *reprinted in* 36 INT’L LEGAL MAT’LS 700 (“UN Convention”).

² See UNITED NATIONS GENERAL ASSEMBLY, 51st Session, 99th Plenary Meeting at 2, 7-8, U.N. Doc. A/51/PV.99 (21 May 1997).

³ Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 17 Mar. 1992 (in force 6 Oct. 1996), *reprinted in* 31 I.L.M. 1312 (1992) (“ECE Convention”).

⁴ Council and Parliament Directive 2000/60/EC, Establishing a Framework for Community Action in the Field of Water Policy, 2000 O.J. (L 327) (“WFD”).

are inevitable. Regional instruments tend to attract a greater degree of detail given the relatively closer shared values of the negotiating parties. These findings lead to a few conclusions:

- *The process of ratifying the UN Convention would be relatively straightforward for EU countries, as they are already subject to stricter more detailed obligations under EC and UNECE law.*
- *The UN Convention could provide an effective platform by which EU countries could share their tremendous wealth of knowledge and experience in implementing bi-lateral, basin specific and regional instruments with other regions of the world where such instruments are weak or non-existent.*
- *In supporting the UN Convention, EU countries would also be implementing EU water development policy, as well as national foreign aid policies, which place great emphasis on the need to strengthen transboundary water resources management throughout the world as a basis for sustainable development.*
- *EU countries would be honouring their commitments to universally agreed goals and targets on the Environment and Development.*

INTRODUCTION

The purpose of this study is to analyse the role and relevance of the UN Convention on the Law of the Non-Navigational Uses of International Watercourses⁵ to the European Union (EU) and its member states. Given that the focus of the UN Convention is on transboundary waters, the study will start with an overview of transboundary waters in Europe. The overview will outline the amount of transboundary waters within Europe, and also the importance of such waters to EU member states. In addition, a synopsis of conflicts and cooperative events concerning Europe's transboundary waters will be offered.

The study will then analyse regional transboundary water law, namely the Water Framework Directive (WFD),⁶ adopted under the EU, and the Convention on the Protection and Use of Transboundary Watercourses and International Lakes,⁷ adopted under the auspices of the UN Economic Commission for Europe (UNECE). The main aim of this analysis will be to identify similarities and differences between the regional instruments and the UN Convention. An analytical framework will be adopted for this part of the study, identifying the key aspects of a legal regime for the management of transboundary waters, as follows: scope, substantive rules and principles, implementation instruments and dispute settlement mechanisms.

Having conducted a comparative analysis of the UN Convention and regional transboundary water law, the study goes on to consider the position of EU member states during the convention's development by the International Law Commission, the negotiation of the text within the General Assembly, and finally its adoption under the auspices of the United Nations. In addition, this

⁵ UN Convention, *supra* note 1.

⁶ WFD, *supra* note 3.

⁷ ECE Convention, *supra* note 4.

section will look at the EU parties to the UN Convention, and the reasons behind their participation. The main aim of this section will be to identify which EU countries appear to be strong supporters, as well as to understand why other states may or may not wish to join the UN Convention.

Finally, the study considers relevant external relations policies of the EU and of some of its member states, in terms of their respective development and water cooperation agendas. The goal is to assess how the UN Convention would support the implementation of such policies by promoting interstate cooperation on the integrated management of transboundary watersheds. This section will also examine the EU's participation in multilateral environmental agreements, with a view to assessing the Union's eligibility to become a party to the UN Convention, as well as to evaluate if it is in its political interest to do so. One of the main findings of the section is that the water-related development policies of the EU and some of its member states firmly recognise the imperative to strengthen the management of transboundary watersheds in developing states, and the central role for freshwater governance in this process. It is thus evident that the EU and its member states should take a more active role in becoming parties to and promoting the UN Convention.

1. TRANSBOUNDARY WATERS IN THE EU

1.1 OVERVIEW

The International River Basin Register identifies 69 international river basins⁸ (see map below) and around 89 transboundary aquifers throughout Europe.⁹ Among these freshwater systems, there are 28 transboundary watersheds confined within EU borders and 29 basins that are shared between EU members and non-EU countries. This indicates that the EU has a *direct* interest in encouraging the adoption of policy platforms that would facilitate transposition of regional expertise and experience on water management beyond the Union's borders. This, of course, would benefit member countries sharing rivers with non-member states and, ultimately, contribute to improved transboundary water management across the continent. The ECE Convention has a key role to play in facilitating freshwater cooperation among EU and non-EU countries that are members of the UNECE.

⁸ International River Basin Register (updated 2002), http://www.transboundarywaters.orst.edu/publications/register/tables/IRB_europe.html; Aaron T. Wolf et al., *International River Basins of the World*, 15 INT'L J. WATER RES. DEVELOPMENT (1999).

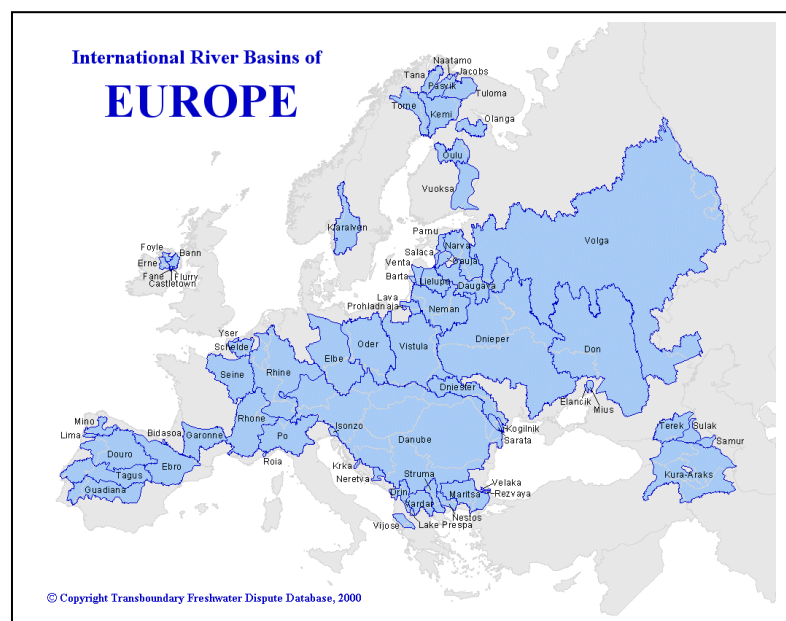
⁹ G. E. Arnold & Zsuzsanna Buzás, Z., *Economic Commission for Europe Inventory of Ground Water in Europe*, 43 GROUND WATER 669 (2005). Among the 110 river basins designated under the WFD, forty watersheds are international, covering 60% of EU's territory. This makes international coordination one of the most significant challenges for the sound implementation of the WFD and the achievement of its objectives. Commission Staff Working Document (2007), http://ec.europa.eu/environment/water/water-framework/implrep2007/pdf/sec_2007_0362_en.pdf.

The UN Convention also has a direct relevance to Greece and Bulgaria, in particular, as both nations share waters with non-EU member states and non-parties to the UNECE Convention. The UN Convention may also be of significance to candidate countries like Turkey and The Former Yugoslav Republic of Macedonia and their co-basin states, which have yet to become parties to the ECE Convention or which are not UNECE member states. This is so because of the UN Convention's global character, the involvement of all UN members in the negotiation of its text, and its approval by more than one hundred countries when the convention was put to a vote at the UN General Assembly.

A wide range of transboundary waters exist from the Danube basin which is shared between 19 states, to 39 river basins that are shared between only two states. In terms of size, basins vary from the Flurry between the UK and Ireland at 60 km², to the Danube, which has a total area of 801,463 km². Most EU countries are heavily reliant on water resources flowing from outside their territory. In 16 countries, more than 90 percent of the country is located within an international river basin.¹⁰ An example is Hungary, which relies on its neighbouring countries for as much as 95 percent of its water resources.

Europe enjoys relatively abundant water resources and uses a fairly small portion of such resources each year.

Whilst the total renewable freshwater resource in Europe is around 3,500 km³, total water abstraction is around 350 km³ per year.¹¹ However, various quantitative and qualitative issues affect freshwater resources across



Europe. Water availability per capita varies widely because water supply and population are distributed unevenly. Countries such as Iceland and Norway have plentiful supplies, while some of the highly populated EU member states, including Poland, Italy, Spain and the southern UK, have the least available water per capita. Parts of Spain receive less than 25mm per year.¹² Droughts and water scarcity are a growing challenge in many European regions, affecting respectively 37 percent

¹⁰ International River Basin Register, *supra* note 8

¹¹ European Environment Agency, Water Information System for Europe (WISE), <http://www.eea.europa.eu/themes/water/>.

¹² EUROPEAN ENVIRONMENT AGENCY, EUROPE'S ENVIRONMENT: THE THIRD ASSESSMENT (2003).

and 11 percent of the EU's territory and 20 percent and 17 percent of its population.¹³ In Spain and Portugal, for instance, almost one-third of land is at risk of desertification.¹⁴ Climate change may aggravate this scenario even further and lead to more frequent competing claims over increasingly scarce national and transboundary water resources. On the other hand, floods have increased in frequency and intensity, calling for improved cooperation between states that share rivers.¹⁵ Furthermore, issues of water quality require greater regional coordination in order to control pollution from sewage and industrial waste, and from the excessive use of pesticides and fertilisers in agricultural activities.¹⁶

1.2 CONFLICT AND COOPERATION

A long tradition of cooperation over transboundary waters exists in Europe. As far back as the 19th century, agreement was reached on the freedom of navigation and equal treatment of riparian states.¹⁷ Treaties signed in the early 20th century included uses such as fisheries and irrigation. Several early treaties included the establishment of joint governance bodies.¹⁸ In recent decades, there has been a discernable shift in European treaty practice from single purpose agreements, towards the joint management of international waters and their multiple uses. In some cases joint "single issue" bodies have evolved into institutions dealing with a wide range of activities relating to integrated water resources management. An example is the Finnish-Norwegian Commission, which was established by a 1980 treaty with rather modest powers.¹⁹ Subsequently, the Commission has taken a leading role in developing integrated water resources management plans for transboundary waters shared between Finland and Norway.

While there has been extensive state practice throughout Europe relating to cooperation over transboundary waters, conflicts have from time to time arisen. In the early 20th century, Belgium and the Netherlands contested the enlargement of certain canals and the construction of certain works in the River Meuse. The dispute was eventually settled by the Permanent Court of International

¹³ SECOND INTERIM REPORT ON WATER SCARCITY AND DROUGHT IN THE EU (2007), *available at* http://ec.europa.eu/environment/water/quantity/pdf/comm_droughts/2nd_int_report.pdf.

¹⁴ EEA, *supra* note 12.

¹⁵ UNITED NATIONS ENVIRONMENT PROGRAMME, FRESHWATER IN EUROPE: FACTS, FIGURES AND MAPS (2004), *available at* <http://www.grid.unep.ch>.

¹⁶ S.C. NIXON ET AL., SUSTAINABLE USE OF EUROPE'S WATER? STATE, PROSPECTS AND ISSUES (2000). *See also* W. KRINNER ET AL., SUSTAINABLE WATER USE IN EUROPE (2000); UNITED NATIONS ENVIRONMENT PROGRAMME, GLOBAL ENVIRONMENT OUTLOOK 3: PAST, PRESENT AND FUTURE PERSPECTIVES (2002), 164-166.

¹⁷ *See Report of the Secretary-General on the Legal Problems Relating to the Utilisation of International Rivers*, U.N. Doc. A/5409 (15 Apr. 1963).

¹⁸ *See* Stephen C. McCaffrey, *The Evolution of the Law of International Watercourses*, 45 AUSTRIAN J. PUBL. INT'L L. 87 (1993); LUDWIK TECLAFF, *THE RIVER BASIN IN HISTORY AND LAW* (1967).

¹⁹ Agreement between Finland and Norway on a Finnish-Norwegian Transboundary Water Commission, 5 Nov. 1980 (in force 1 May 1981), <http://www.ymparisto.fi/default.asp?contentid=187225&lan=en>. *See generally* MALGOSIA FITZMAURICE & OLUFEMI ELIAS, *WATERCOURSE CO-OPERATION IN NORTHERN EUROPE* (2004).

Justice.²⁰ The same Court was also asked to resolve a dispute concerning the River Oder between Germany, Denmark, France, Great Britain, Sweden, Czechoslovakia and Poland.²¹ Moreover, the early 20th century witnessed a dispute between France and Spain over Lake Lanoux and the Carol River in the Ebro Basin. France proposed certain works for the utilisation of the waters of Carol River which the government of Spain feared would adversely affect their rights and interests, contrary to the Treaty of Bayonne concluded by the parties in 1866. Eventually, the dispute was resolved by an international arbitral tribunal.²²

During the 1990s, Portugal expressed concern over Spain's plans to divert a number of shared transboundary rivers — the Minho, Douro, Tagus and Guadiana — for hydropower generation. Serious droughts within the Iberian Peninsula in the early 1990s aggravated the situation.²³ A history of conflicts also exists between Greece and Bulgaria on the Nestos Basin. Despite the adoption of a basin-wide agreement in 1995, cross-border pollution problems persist. In recent years, Greek citizens have repeatedly complained to Bulgarian authorities about industrial and domestic waste that has been dumped upstream, at the cost of downstream uses of the basin. Both countries have agreed to closer cooperation to stop the pollution of the Nestos Basin, especially given Bulgaria's accession to the EU and its obligation to meet the environmental obligations of EU law.²⁴

The Danube has been a source of conflict between several of its basin states. The Gabčíkovo-Nagymaros Dam system, for example, remains a major issue between Hungary and the Slovak Republic. A 1997 decision by the International Court of Justice requested the two nations to reach a compromise solution based on the Court's findings.²⁵ However, despite patchy talks, a mutually agreeable decision has yet to be reached.²⁶ Various other construction projects have caused controversy within the Danube Basin in recent years. Following environmental protests from 10,000 Croats and 5,000 Hungarians in November 2004, Croatian plans to build a hydroelectric plant on the Drava River have reportedly been put on hold.²⁷ Similarly, efforts by Ukraine to build the Bystroe navigation canal have sparked tension due to Romania's claims that the canal would

²⁰ Diversion of Water from the Meuse (Neth. v. Belg.)(Merits)[1937] P.C.I.J. (ser A/B), No. 70.

²¹ Territorial Jurisdiction of the International Commission of the River Oder (U.K., Czech., Den., Fr., Ger., Swed. v. Pol.)(judgement)[1929] P.C.I.J. (ser A), No. 23. In reaching its opinion the Court recognised, pursuant to the "general principles of international river law", the "community of interests" of riparian states in navigable rivers.

²² Lake Lannoux Arbitration (Fr. v. Spain)(1957)24 Int'l L. Rpt. 101.

²³ Oregon State University, International Water Event Database, <http://www.transboundarywaters.orst.edu>.

²⁴ See Athens News Agency, *Greek-Bulgarian Meeting on Reducing Pollution of the Nestos River*, 6 Dec. 2004; Athens News Agency, *Greek-Bulgarian Meeting in Drama for the Protection of the Nestos River*, 19 Mar. 2005.

²⁵ Case Concerning the Gabčíkovo-Nagymaros Project (Hung. V. Slovak.), Sep. 25, 1997, 37 I.L.M. 162 (1998).

²⁶ See International Court of Justice, *Current docket of the Court*, <http://www.icj-cij.org/icjwww/idocket.htm>. See also Budapest Business Journal, *Hungary/Slovakia Delegations Meet on Dam Dispute, Agreement Still Far*, 20 Dec. 2006, <http://www.bbj.hu>.

²⁷ Hungarian News Agency, *Croatian Plans for Hydroelectric Plant on Hold*, 8 Feb. 2005.

have serious environmental consequences on the Danube delta's ecosystem.²⁸ Such claims were substantiated by a UNECE Inquiry Commission, under the auspices of the Convention on Environmental Impact Assessment in a Transboundary Context.²⁹

These examples of cooperation and conflict over European transboundary waters illustrate how important such waters are to EU countries, leading them to the adoption of two regional instruments dealing with the topic within the EU and the UNECE region. The next section analyses such instruments: the Water Framework Directive and the ECE Convention.

2. THE RELATIONSHIP BETWEEN THE UN CONVENTION AND REGIONAL TRANSBOUNDARY WATER LAW

2.1 THE EU WATER FRAMEWORK DIRECTIVE

2.1.1 Background

EU water law and policy dates back over thirty years.³⁰ Earlier policy adopted a sectoral approach, mainly focussing on setting water quality objectives for particular water uses, or limiting the discharge of certain pollutants.³¹ The piecemeal approach to EU water law and policy meant that by the mid-nineties it suffered from a lack of coherence and coordination.³² In 1992, the Council and the European Parliament requested the Commission to propose a new policy to promote the integrated management of water resources throughout Europe.³³ After considerable negotiation amongst member states and other interested parties, the Water Framework Directive

²⁸ BBC Monitoring International Reports, *Ukraine has No EU Approval for Danube Canal*, Romanian Minister, 2 Mar. 2005.

²⁹ Convention on Environmental Impact Assessment in a Transboundary Context, 25 Feb. 1991 (in force 10 Sep. 1997), reprinted in 30 I.L.M. 800 (1991) ("Espoo Convention"). See UNECE, *UNECE Inquiry Commission concludes that Danube Canal will have "significant adverse transboundary effects" on the environment*, http://www.unece.org/press/pr2006/06env_p05e.htm.

See also Espoo Inquiry Commission, *Report on the Likely Significant Adverse Transboundary Impacts of the Danube: Black Sea Navigation Route at the Border of Romania and the Ukraine*, July 2006, <http://www.unece.org/env/eia/documents/inquiry/Final%20Report%2010%20July%202006.pdf>.

³⁰ See generally LUDWIG KRÄMER, EC ENVIRONMENTAL LAW 243-262 (5th ed. 2003).

³¹ See, e.g., Council Directive 75/440/EEC, 1975 O.J. (L 194) 26 (Surface Water Directive); Council Directive 76/160/EEC, 1976 O.J. (L 31) 1 (Bathing Water Directive); Council Directive 78/659/EEC, 1978 O.J. (L 22) 1 (Fish Water Directive); Council Directive 79/923/EEC, 1979 O.J. (L 281) 47 (Shellfish Directive); Council Directive 80/778/EEC, 1980 O.J. (L 129) 23 (Dangerous Substances Directive); Council Directive 80/68/EEC, 1980 O.J. (L 20) 43 (Groundwater Directive).

³² A second wave of legislation took place in the early 90s, including Council Directive 91/271/EEC, 1991 O.J. (L 135) 40 (Urban Waste Water Treatment Directive); Council Directive 91/676/EEC, 1991 O.J. (L 375) 1 (Nitrates Directive); Council Directive 96/61/EC, 1996 O.J. (L 257) 26 (Integrated Pollution Prevention and Control Directive).

³³ The decision was taken at the European Council in Edinburgh, see (1992) 12 *Bulletin of the European Communities*, at 18. The request resulted in the *Communication from the Commission on the European Community Water Policy*, COM (1996) 59 (21 Feb. 1996).

(WFD), establishing a framework for Community action in the field of water policy, was adopted on 23 October 2000, and entered into force for all member states on 22 December 2000.³⁴

The purpose of this section is to provide a comparative analysis of the WFD and the UN Convention, in relation to their respective scope, substantive norms, implementation instruments, and dispute settlement mechanisms.

2.1.2 Scope

Scope refers to the geographical and functional application of a legal instrument. Within the transboundary waters context, provisions related to scope should determine *who* is entitled to *what* water. Most importantly, provisions related to scope will identify the resource in question, i.e., confined groundwater, a watercourse or drainage basin.

The WFD has a broader geographic scope than the UN Convention. Whereas the WFD covers *all* EU waters, i.e., inland surface waters, transitional waters, coastal waters, and groundwater,³⁵ the UN Convention is restricted to transboundary watersheds³⁶ In other words, the WFD transcends the geographic scope of the UN Convention to encompass a) both national and international water resources, rather than only basins that cross international boundaries, and b) all types of aquifers, instead of only those connected to a surface water system.

While aquifers not connected to transboundary watersheds are outside the scope of the UN Convention, the International Law Commission has recommended that states “be guided by the principles contained in the its Draft Articles on the Law of Non-Navigational Uses of International Watercourses (“1994 ILC Draft Articles”),³⁷ where appropriate, in regulating transboundary groundwater.”³⁸ The 1994 ILC Draft Articles served as the basis for the negotiations that took place at the UN General Assembly, leading to the adoption of the UN Convention. The recommendation by the International Law Commission is thus still valid in regards to the UN Convention just as much as it was with respect to its draft articles.³⁹

³⁴ WFD, *supra* note 3.

³⁵ See WFD, *supra* note 3, Article 2(2), (3), (6), (7), respectively, for the definitions of “groundwater,” “inland waters,” “transitional waters,” and “coastal waters.”

³⁶ See UN Convention, *supra* note 1, Articles 1(1), 2(a)&(b).

³⁷ Draft Articles on the Law of the Non-navigational Uses of International Watercourses (with Commentaries), G.A. Res. 49/52, U.N. Doc. A/RES/49/52 (9 Dec. 1994), *available at* http://untreaty.un.org/ilc/texts/instruments/english/commentaries/8_3_1994.pdf (“1994 ILC Draft Articles”).

³⁸ *Resolution on Transboundary Confined Groundwater*, [1994] 2(2) Y.B. Int’l L. Comm’n 135), *available at* http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/8_3_1994_resolution.pdf.

³⁹ Subsequently, the International Law Commission has taken up the study of transboundary groundwater, and adopted 19 draft articles on the law of transboundary aquifers. International Law Commission, *Titles and Texts of the Draft Articles Adopted by the Drafting Committee on First Reading: The law of transboundary aquifers*, U.N. Doc. A/CN.4/L.688 (7 June 2006) (“ILC Draft Articles”). As these articles are still being negotiated and have not been sanctioned by the international community, the UN Convention remains as a valid guiding source to states in the use, management, and protection of transboundary aquifers isolated from the hydrological cycle

Another distinction between the WFD and the UN Convention is in the use of “river basin districts”⁴⁰ within the former instrument. Pursuant to the WFD, “river basins districts” *must* be established throughout the entire EU.⁴¹ Where a river basin district lies solely within the territory of one member state it must be assigned to a “competent authority,” responsible for applying EU legislation throughout the entire river basin.⁴² There is *no obligation* to assign a competent authority to an entire *transboundary* river basin. Each basin country, however, must coordinate with other co-basin member states the application of EU water legislation across the watershed and, with that purpose, may use existing cooperation arrangements.⁴³ Where river basin districts extend beyond the borders of the EU there is no obligation to adopt a river basin approach and coordination with non-member states is simply *encouraged*.⁴⁴

The UN Convention does not mention anything similar to the WFD’s “river basin districts.” When the ILC first initiated its study on the law of the non-navigational uses of international watercourse it solicited the opinion of states on whether the geographical concept of an “international drainage basin” should be the appropriate basis for their study.⁴⁵ Ultimately, the expression “international watercourse” was chosen by the ILC and supported by states. In light of the expression chosen and based on a *literal interpretation*, the UN Convention might appear to be more restrictive than the WFD for not *expressly* adopting a drainage basin approach. A closer, systematic scrutiny, however, permits a wider interpretation.⁴⁶ According to its Article 1(1), the UN Convention “applies to uses of international watercourses and of their waters for purposes other than navigation *and to measures of protection, preservation and management* related to the uses of those watercourses and their waters.”⁴⁷ This means that the UN Convention applies to land-based activities taking place within the river basin, and which might affect the protection, management or preservation of an international watercourse.⁴⁸ In fact, a “river basin approach” is implicit in the convention’s substantive rules and principles discussed below. A systematic analysis of Article 1(1) together with other relevant provisions safely leads to the conclusion that, just as with the WFD,

⁴⁰ A “river basin district” means “the area of land and sea, made up of one or more neighbouring river basins together with their associated groundwaters and coastal waters ... identified ... as the main unit for management of river basins.” WFD, *supra* note 3, Article 2(15).

⁴¹ *Id.* Article 3.

⁴² *Id.* Article 3(1).

⁴³ *Id.* Article 3(3). See S Nilsson et al., *International River Basin Districts under the EU Water Framework Directive: Identification and Planned Cooperation*, EUROPEAN WATER MANAGEMENT ONLINE (EWA, 2004).

⁴⁴ WFD, *supra* note 3, Article 3(5). One example of this coordination is the International Commission for the Protection of the Danube River (ICPDR) where all non-EU member states are politically committed to adopt a river basin approach and implement the WFD. See the ICPDR’s website for more information, at <http://www.icpdr.org/>.

⁴⁵ *Replies of Governments to the Commission’s Questionnaire*, [1976] 2 Y.B. Int’l L. Comm’n 147, U.N. Doc. A/CN.4/294 and Add. 1.

⁴⁶ See Attila Tanzi, *The Relationship between the 1992 UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes and the 1997 UN Convention on the Law of the Non-Navigational Uses of International Watercourses* 8 (2000), <http://www.unece.org>.

⁴⁷ UN Convention, *supra* note 1.

⁴⁸ See STEPHEN MCCAFFREY, *THE LAW OF INTERNATIONAL WATERCOURSES* 34-50 (2001).

any activities within the river basin that may have an impact on the quantity or quality of an international watercourse fall under the scope of the UN Convention.

2.1.3 Substantive Rules and Principles

Substantive rules and principles address issues of resource allocation between states, with the aim of ensuring that such waters are utilized in an optimal, equitable and sustainable manner. In other words, substantive rules and principles set out the general rights and obligations pertaining to management of transboundary waters. The primary substantive principle of international law relating to transboundary waters allocation is that of equitable and reasonable utilisation. Other rules include the obligations to take all appropriate measures to prevent significant harm and to protect aquatic ecosystems.

The primary substantive rule of the WFD is contained in Articles 1 and 4, which require member states to prevent further water deterioration and to implement the necessary measures to achieve “good water status” in all EU waters by 2015. The criteria for determining what constitutes “good” water status is assessed on the basis of detailed qualitative and quantitative factors, such as abundance of aquatic flora and fauna, the level of salinity, the quantity and dynamics of water flow, nutrient concentrations, and so on.⁴⁹ Specific requirements apply to drinking water, to pollution, and to the management of aquifers, among others.⁵⁰

The principle of equitable and reasonable utilisation and participation lies in the centre of the UN Convention, which establishes that basin states “shall in their respective territories utilise an international watercourse in an equitable and reasonable manner.”⁵¹ The convention includes a non-exhaustive list of factors that are to inform the decision-making process of determining what is equitable and reasonable under the circumstances of each particular case.⁵² Such factors may include, for example, the natural characteristics of a watercourse, the effects of uses within one basin state on other co-basin countries, or the implementation of environmental protection and conservation measures.⁵³ In each case, “all relevant factors are to be considered together and a conclusion reached on the basis of the whole.”⁵⁴ Inherent in the notion of equitable and reasonable

⁴⁹ See WFD, *supra* note 3, Annex V, for detailed criteria for assessing the status of water resources.

⁵⁰ *Id.* Article 10. Member states must ensure that drinking water meets the standards set out in Directive 80/778/EEC, as amended by Directive 98/83/EC. A combined approach is to be adopted in relation to pollution: member states must follow applicable EU directives to establish and/or implement emission controls based on best available techniques, or the relevant emission limit values; in the case of diffuse impact, controls must include best environmental practices, as appropriate. See, e.g., Council Directive 96/61/EC, on integrated pollution prevention and control; Council Directive 91/271/EEC, on urban waste-water treatment; and Council Directive 91/676/EEC, on the protection of water against pollution caused by nitrates from agricultural sources.

⁵¹ UN Convention, *supra* note 1, Article 5(1)

⁵² *Id.* Article 6.

⁵³ See *id.* Article 6(1).

⁵⁴ *Id.* Article 6(3).

utilisation is the allocation of shared natural resources among competing uses — more specifically, the allocation of water utilization rights and of the benefits deriving from the management of transboundary freshwater resources among basin states. As noted in by the ILC:

In many cases, the quality and quantity of water in an international watercourse will be sufficient to satisfy the needs of all watercourse States. But where the quantity or quality of the water is such that all the reasonable and beneficial uses of all watercourse States cannot be realised, a ‘conflict of uses’ results. In such a case, international practice recognises that some adjustments or accommodations are required in order to preserve each watercourse State’s equality of right. These adjustments or accommodations are to be arrived at on the basis of equity, and can best be achieved on the basis of specific watercourse agreements.⁵⁵

Therefore, while the WFD focuses more directly on water management and conservation issues, the UN Convention is mainly concerned with reconciling competing interests among basin states, through improved interstate coordination on the use, management and protection of internationally shared basins. In many cases, reconciling such interests may be a precondition to more evolved systems of basin-wide, integrated freshwater management, such as the ones envisioned under the WFD, within the EU, and the ECE Convention, across the UNECE region. Within the EU, the focus of the UN Convention could be of particular significance for freshwater systems such as the Evros basin, crossing the territories of Bulgaria, Greece, and Turkey, and the Lake Prespa, shared among Greece, The Former Republic of Macedonia, and Albania. From a development cooperation standpoint, the UN Convention is of special relevance to places like the Nile basin and, in general, in scarce regions with growing water demand and deteriorating water quality. The UN Convention’s usefulness, of course, goes further: it also has a key role to play in the negotiation of basin-wide agreements, where none exist (e.g., Congo Basin); the revision of existing water treaties that became outdated (e.g., Aral Sea) or do not cover transboundary freshwater management appropriately (such as the Amazon Cooperation Treaty); and as a universal platform for the progressive development and implementation of international water law and policy (for example, the convention has served as the basis for discussions on the ILC Draft Articles on the Law of Transboundary Aquifers and Aquifer Systems).⁵⁶

While attending to conflicting uses is at the heart of the UN Convention, it affords environmental protection considerable attention. In reconciling conflicting uses, basin states must use and develop a transboundary watershed “with a view to attaining optimal and *sustainable* utilisation thereof and benefits therefrom ... *consistent with adequate protection of the watercourse*”⁵⁷ Moreover, states “shall *participate* in the use, development *and protection* of an international

⁵⁵ 1994 ILC Draft Articles, *supra* note 34, at 98.

⁵⁶ ILC Draft Articles, *supra* note 37.

⁵⁷ UN Convention, *supra* note 1, Article 5(1) (*emphasis added*).

watercourse in an equitable and reasonable manner.”⁵⁸ Therefore, *to a state’s right to use an international watercourse corresponds an obligation to protect it*. A correlated obligation stipulates that, consistent with the principle of equitable and reasonable utilisation, states must take all appropriate measures to prevent the causing of significant harm to other co-basin states.⁵⁹

Perhaps the most significant provision of the UN Convention in relation to “environmental objectives” is Article 20,⁶⁰ which requires states to, “individually and, where appropriate, jointly, protect and preserve the ecosystems of international watercourses.”⁶¹ This obligation is not framed as a measure to prevent significant transboundary harm and stands on its own, i.e., the ecosystem of an international watercourse is not protected to avoid transboundary harm, but constitutes a goal in itself. McCaffrey justifies this approach as follows:

[A] state’s failure to protect the ecosystem of an international watercourse may affect the ecosystems in ways that are not readily perceived, yet whose transboundary effects may become apparent too late to remedy the problem. Species may be lost, flooding may ensue, fish stocks may plummet. This kind of problem can be particularly acute when the watercourse is shared by a number of states, several of which allow activities that modify its ecosystems. Even if these individual modifications are small, they may lead to cumulative impacts that none of the states foresaw individually.⁶²

It is true that the UN Convention is not as “environmentally” focussed as the WFD (e.g., it does not provide for specific criteria to determine ecological status). It cannot be denied, however, that the convention supports the need for states to protect ecosystems and develop rivers in a sustainable manner. In this sense, Tanzi and Arcari explain that, “under the Convention, ecosystem protection is conceived as inherent in the idea of equitable use.”⁶³ The UN Convention is, therefore, consistent with an ecosystem approach.⁶⁴

2.1.4 Implementation Instruments

Effective application of substantive rules and principles is only possible if accompanied by a set of implementation mechanisms. Such implementation mechanisms should be designed to ensure that the substantive rules and principles are both transposed into national laws and policy, and monitored and reassessed in light of changes in circumstances. A number of key provisions relating to implementation can be found to varying degrees in international treaty practice relating to

⁵⁸ *Id.* (emphasis added).

⁵⁹ *Id.* Article 7.

⁶⁰ Article 20 is complemented by Articles 21-23, which relate to pollution control, alien species and the marine environment. *Id.*

⁶¹ UN Convention, *supra* note 1.

⁶² McCaffrey, *supra* note 45, at 394.

⁶³ Attila Tanzi & Maurizio Arcari, *THE UNITED NATIONS CONVENTION ON THE LAW OF INTERNATIONAL WATERCOURSES* (2001), at 245.

⁶⁴ Owen McIntyre, *The Emergence of an ‘Ecosystem Approach’ to the Protection of International Watercourses under International Law*, 13 REV. EUR. COMM. & INT’L ENV’T L. 1 (2004).

transboundary waters. Such provisions include the obligation to notify and consult on planned measures, the regular exchange of information, coordinated monitoring of the conditions of transboundary waters, public participation, compliance and effectiveness, and the establishment of joint bodies, as examined below.

Institutional Arrangements

In contrast to the UN Convention, the WFD is relatively specific in relations to institutional arrangements. As noted above, under the WFD, member states must establish competent authorities with responsibility for the implementation of EU water legislation within each river basin district. Moreover, co-basin states must coordinate to produce a single international river basin management plan for each transboundary basin.”⁶⁵ Where such a plan is not produced, states must at least adopt a river basin management plan covering the parts of the watershed within their respective territories.⁶⁶ These plans must contain, e.g., a general description of the characteristics of the river basin district, a review of the environmental impact of human activity, a detailed economic analysis of water uses within the district, a list of environmental objectives, and a summary of the programme of measures adopted.⁶⁷

The WFD and the UN Convention do not contain a mandatory requirement for states to establish joint governance bodies to coordinate the joint management of international watercourses.⁶⁸ Under the UN Convention, “watercourse States *shall*, at the request of any of them, enter into *consultations* concerning the management of an international watercourse, which *may* include the establishment of a *joint management mechanism*.”⁶⁹ Indeed, it would be difficult to expect a stronger language to be adopted in an international agreement negotiated at the global level. The convention gives basin countries enough flexibility to request consultations and negotiate on the need for a governance body, at the same time that it sends riparians a clear message on the importance of jointly considering the establishment of such mechanisms.

Monitoring and Assessment

Article 8 of the WFD obliged member states to establish coherent and comprehensive monitoring programmes within each river basin district by 2006.⁷⁰ In addition to the requirements

⁶⁵ WFD, *supra* note 3, Article 13(2).

⁶⁶ *Id.* Article 13(2).

⁶⁷ *See id.* Articles 5, 11, and Annexes, for more details as to what should be included in the River Basin Management Plan.

⁶⁸ *Id.* Article 3(4)-(5) .

⁶⁹ UN Convention, *supra* note 1, Article 24(1). *See id.* Articles 8(2), 24(2).

⁷⁰ WFD, *supra* note 3, Article 8.

of the WFD, member states must comply with EU legislation relating to environmental assessments, including, e.g., the 1985 Environmental Impact Assessment Directive⁷¹ and the 2001 Strategic Environmental Impact Assessment Directive.⁷²

In contrast, the UN Convention does not provide any specific provision on the monitoring of international watercourses, but regulates the duty of basin states to exchange relevant information, pursuant to a general obligation to cooperate. States must “on a regular basis exchange readily available data and information on the condition of the watercourse, in particular that of a hydrological, meteorological, hydrogeological and ecological nature and related to the water quality as well as related forecasts.”⁷³ Such data and information is to be processed in a manner that facilitates its use to other co-basin states.⁷⁴ If data or information is not readily available, states are to employ their *best efforts* to comply with the request, but “may condition ... compliance upon payment by the requesting State of the reasonable costs of collecting and, where appropriate, processing such data or information.”⁷⁵ Finally, the convention establishes detailed procedural duties on notification, consultation, negotiation, and information exchange in the case of planned measures that may affect the conditions of transboundary watersheds.⁷⁶

As would be expected from a treaty negotiated and adopted at the global level, the provisions of the UN Convention that address exchange of data and information are less detailed and developed than the requirements under EU legislation on joint water monitoring and assessment. Notwithstanding, the UN Convention creates a useful system of procedural duties that may avoid unnecessary disputes over planned measures and set the stage for the negotiation of more specific regional and sub-regional agreements among basin states.

Public Participation

The WFD provides that member states shall “encourage the active involvement of all interested parties in the implementation of this Directive, in particular in the production, review and updating of the river basin management plans.”⁷⁷ The WFD contains a set of requirements and timelines to ensure effective public participation and access to information in all procedures related to those

⁷¹ Council Directive 85/337/EEC, 1985 O.J. (L 175) 40 (“EIA Directive”), as amended by Council Directive 97/11/EC, 1997 O.J. (L 73) 5. The EIA Directive requires that projects likely to have significant effects on the environment be subject to environmental assessment. If a project falls under the Directive, the developer is required to provide information on its environmental effects, and the public must be consulted. The directive also provides for public participation in a transboundary context. *Id.* Articles 2, 5, 7.

⁷² Council Directive 2001/42/EC, 2001 O.J. (L 197) 30. The SEA Directive requires assessment of all plans and programmes in particular sectors that set the framework for projects either subject to environmental impact assessment or assessment under the Habitats Directive. Council Directive 92/43/EEC, 1992 O.J. (L 206) 7.

⁷³ UN Convention, *supra* note 1, Article 8.

⁷⁴ *Id.* Article 9(3).

⁷⁵ *Id.* Article 9(2).

⁷⁶ *Id.* Articles 11-19.

⁷⁷ WFD, *supra* note 3, Article 14(1).

plans.⁷⁸ In addition, the EU is a party to the 1998 Aarhus Convention⁷⁹ and has adopted a number of instruments to support its implementation by member states.⁸⁰

The UN Convention does not regulate public participation in a transboundary context with such level of detail. The convention, however, incorporates the “no-discrimination rule,” as follows:

Unless the watercourse States concerned have agreed otherwise for the protection of the interests of persons, natural or juridical, who have suffered or are under a serious threat of suffering significant transboundary harm as a result of activities related to an international watercourse, a watercourse State shall not discriminate on the basis of nationality or residence or place where the injury occurred, in granting to such persons, in accordance with its legal system, access to judicial or other procedures, or a right to claim compensation or other relief in respect of significant harm caused by such activities carried on its territory.⁸¹

This provision takes a first step in promoting public participation in the management of transboundary waters, by making unlawful for states to discriminate against aliens in the case of transboundary harm from the utilization of an international watercourse. This is a direct, binding obligation on states that choose to ratify the convention. The next step would be for basin countries, parties to the convention, to negotiate the adoption of mechanisms to implement such duty in a more effective and equitable way.

Compliance and Enforcement

A number of mechanisms are in place to ensure compliance and enforcement of the WFD, including the abovementioned obligations relating to impact assessment, public information and consultation, among other tasks member states need to perform while implementing that directive. In addition, member states are under several reporting requirements such as submitting to the European Commission river basin management plans and regular updates.⁸² The commission must also report on progress at each stage of the implementation of the WFD.

In turn, the UN Convention contains no similar provisions on compliance and enforcement. This is likely due to the fact that provisions on compliance and enforcement are a more recent phenomenon in water-related agreements.

⁷⁸ *Id.*

⁷⁹ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Jun. 25, 1998 (in force 30 Oct. 2001), *reprinted in* 38 I.L.M. 517 (1999) (“Aarhus Convention”).

⁸⁰ *See, e.g.*, Council and Parliament Directive 2003/4/EC, O.J. (L 41) 26, on public access to environmental information; Council and Parliament Directive 2003/35/EC, O.J. (L 156) 17, on public participation in respect of the drawing up of certain plans and programmes relating to the environment; Council and Parliament Regulation 1367/2006, OJ (L 264) 13, on the application of the provisions of the Aarhus Convention to Community institutions and bodies.

⁸¹ UN Convention, *supra* note 1, Article 32.

⁸² WFD, *supra* note 3, Article 15.

2.1.5 Dispute Settlement Mechanisms

The final component of the analytical framework relates to the mechanisms in place to ensure that any disputes between states, both on points of law and fact, are resolved in a peaceful manner. Dispute settlement mechanisms include negotiation and other diplomatic means, fact-finding commissions, and voluntary or compulsory arbitration.

The WFD has no specific dispute settlement mechanisms, as controversies between member states are subject to the general procedural framework set out by EU legislation.⁸³ The European Commission has general powers and responsibilities to ensure that EU law is implemented. As noted above, member states are under certain reporting obligations, but the commission may also undertake its own assessments, or investigate complaints raised by EU citizens, organizations, or the European Parliament. In addition, the commission may launch infringement proceedings against a member state in breach of EU legislation.⁸⁴ The commission triggers the process by issuing a formal letter, requesting the member state to submit its observations within two months. Where there is a failure to respond or the response is deemed inadequate, the commission issues a reasoned opinion. If the member state fails to comply with the reasoned opinion within two months of its issuance, the commission can refer the case to the European Court of Justice. If the Court finds the member state in breach of Community Law, it can order it to comply with the Court's Judgement. Certain powers are available to the Court, including imposing fines on member states.⁸⁵

Article 33(1) of the UN Convention requires states to settle disputes in a peaceful manner. But "if the parties cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation or conciliation by, a third party, or make use, as appropriate, of any joint watercourse institutions that may have been established by them or agree to submit the dispute to arbitration or to the International Court of Justice."⁸⁶ If within six months the parties have not reached agreement, one or both of the parties may submit the dispute to a third-party fact finding commission. The parties must consider in good faith the commission's report, with its findings and recommendations for the peaceful and equitable resolution of the dispute.⁸⁷

⁸³ See L. Kramer, *EC Environmental Law* 372-394 (Sweet & Maxwell, London 5Rev Ed. 2003).

⁸⁴ Three categories of breaches of Community Law exist: (i) non-communication, where a member state has failed to adopt and communicate to the commission national legislation implementing a directive, after the deadline for implementation has passed; (ii) non-conformity, where the member state has failed to implement a directive correctly; and (iii) bad application, where a member state is failing correctly to apply Community Law in practice in a particular case. See European Commission, Communication on Better Monitoring of the Application of Community Law, 11 Dec. 2002, COM(2002)725 final ("Communication on Better Monitoring").

⁸⁵ Consolidated Versions of the Treaty on European Union and of the Treaty Establishing the European Community, 2006 OJ (C 321) E/1, Article 226 ("EC Treaty"). See also Communication on Better Monitoring, *supra* note 80.

⁸⁶ UN Convention, *supra* note 1, Article 33(2). See *id.* Annex, for arbitration rules and procedures.

⁸⁷ *Id.* Article 33(7)-(8).

2.1.6 Conclusion

A comparative analysis of the UN Convention and the WFD shows that there are no conflicts between the two instruments. However, differences do exist in the scope, depth, and objectives of each instrument, as well as in the extent of the obligations placed on states. The WFD covers *all* EU waters (surface, groundwater, coastal and transitional), whereas the UN Convention deals exclusively with transboundary river basins. Moreover, while both can be characterized as “framework” instruments, the WFD, as a regional statute, is more detailed and precise than the UN Convention. The WFD is also supported by the institutional framework of the EU and supplemented by EU and UNECE relevant legislations.

The level of detail within and surrounding the WFD provides a useful example of how the more general provisions of the UN Convention might be both strengthened and implemented within the EU context and beyond. In addition, the comparative analysis between the two instruments indicates that ratifying the UN Convention would not represent a legislative burden to EU countries, as they are already subject to stricter, more detailed obligations under Community Law and the UNECE agreements. At the same time, by becoming parties to the UN Convention, EU member states would leave a lasting legacy of improved transboundary water resources governance at the global level, in honour of their commitment to universally agreed goals and targets on environment and development (e.g., Paragraph 26 of the Johannesburg Plan of Implementation; target 10, on access to water and sanitation, under the Millennium Development Goals; 2010 target, under the Convention on Biological Diversity, etc.). They would also be contributing to the entry into force of an instrument that is of great relevance to EU foreign aid policies, in particular the EU Water Initiative, to promote transboundary integrated river basin management around the world.

2.2 THE ECE CONVENTION

2.2.1 Background

This section compares the UN Convention and the ECE Convention — a regional water agreement adopted under the auspices of the United Nations Economic Commission for Europe (UNECE). The UNECE was established in 1947 by the UN Economic and Social Council, as one of the five regional commissions of the UN. The overarching goal of the commission is to foster greater economic cooperation amongst its member states. The UNECE is involved in issues relating to economic analysis, environment and human settlements, statistics, sustainable energy, trade, industry and enterprise development, timber and transport. The commission’s activities include policy analysis, development of conventions, regulations and standards, and technical assistance.

There are 55 UNECE member states, covering Europe, Central Asia, North America and Israel. The UNECE first started looking at water issues in the late 1960s⁸⁸ and has since developed a number of recommendations, declarations, and guidelines to member states that, as non-binding policy documents, support and underpin cooperation among riparians.⁸⁹

The ECE Convention was adopted in 1992 as a framework agreement and has been strengthened by the adoption of two supplementary protocols: the 1999 Protocol on Water and Health⁹⁰ and the 2003 Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters.⁹¹ In addition, the parties to the convention have agreed on numerous policy documents that support its implementation.⁹² Furthermore, the convention is implemented as part of a wider UNECE environmental programme, under which the following regional environmental agreements have been adopted: the 1991 Convention on Environmental Impact Assessment in a Transboundary Context,⁹³ the 1992 Convention on the Transboundary Effects of Industrial Accidents,⁹⁴ and the 1998 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.⁹⁵ The ECE Convention has been highly influential in fostering the adoption by parties of bilateral or multilateral sub-regional and basin-specific agreements, including treaties on the Danube,⁹⁶ Rhine,⁹⁷ Meuse and Scheldt,⁹⁸ Lake Peipsi,⁹⁹ the shared waters between Russia and Kazakhstan,¹⁰⁰ and those between Russia and the Ukraine.¹⁰¹

⁸⁸ See Patricia Wouters & Sergei Vinogradov, *Analysing the ECE Water Convention: What Lessons for the Regional Management of Transboundary Resources?*, 2003/4 YEARBOOK OF INTERNATIONAL CO-OPERATION ON ENVIRONMENT AND DEVELOPMENT 55.

⁸⁹ See, e.g., Charter on Groundwater Management, UN Doc. ECE/ENVWA/12 (1989); Recommendations on Rational Use of Water in Industrial Processes, UN Doc. ECE/ENVWA/2 (1987); Recommendations on Water-Management Systems, UN Doc. ECE/ENVWA/2 (1987); Declaration of Policy on the Rational Use of Water, UN Doc. ECE/ENVWA/2 (1984); Recommendations on Drinking Water Supply and Effluent Disposal System, UN Doc. ECE/ENVWA/2 (1982); Recommendations on Water Pollution from Animal Production, UN Doc. ECE/ENVWA/2 (1981); Recommendations on Economic Instruments for Rational Utilization of Water Resources, UN Doc. ECE/ENVWA/2 (1980); Recommendations on Rational Utilization of Water, UN Doc. ECE/ENVWA/2 (1979); Recommendations on Selected Water Problems in Islands and Coastal Areas with special regard to Desalination and Ground Water, UN Doc. ECE/ENVWA/2 (1978); Recommendations on Long-term Planning of Water Management, UN Doc. ECE/ENVWA/2 (1976).

⁹⁰ Protocol on Water and Health to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, Jun. 17, 1999 (in force 4 Aug. 2005), http://www.unece.org/env/water/text/text_protocol.htm.

⁹¹ Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters, 21 May 2003 (not yet in force), <http://www.unece.org/env/civil-liability/protocol.html>.

⁹² See, e.g., ECONOMIC COMMISSION FOR EUROPE CONVENTION ON THE PROTECTION AND USE OF TRANSBOUNDARY WATERCOURSES AND INTERNATIONAL LAKES, STRATEGIES FOR MONITORING AND ASSESSMENT OF TRANSBOUNDARY RIVERS, LAKES AND GROUNDWATERS (2006), available at <http://www.unece.org/env/water/publications/documents/StrategiesM&A.pdf>.

⁹³ Espoo Convention, *supra* note 26.

⁹⁴ Convention on the Transboundary Effects of Industrial Accidents, 17 Mar. 1992 (in force 19 Apr. 2000) ("TEIA Convention"), <http://www.unece.org/env/teia/text.htm>.

⁹⁵ Aarhus Convention, *supra* note 75.

⁹⁶ Convention on the Cooperation for the Protection and Sustainable use of the Danube River, 29 Jun. 1994 (in force 22 Oct. 1988), reprinted in 19 Int'l Env't Rep. (BNA) 997 (30 Oct. 1996) ("Danube Convention").

The ECE Convention was originally accessible only to states that are members of the UNECE. In 2003, an amendment to the ECE Convention was adopted to extend the right of participation to non-UNECE members.¹⁰² However, the Meeting of the Parties will not consider any request for accession by countries outside the UNECE region until the amendment has entered into force for all states and organisations that were parties to the Convention when the amendment was adopted. To date, this amendment has been accepted by six countries.¹⁰³

2.2.2 Scope

In terms of geographic scope, the ECE Convention covers *all* “transboundary waters,” i.e., “any surface or ground waters which mark, cross or are located on boundaries between two or more States.”¹⁰⁴ As with the UN Convention, the ECE Convention adopts an ecosystem approach, regulating not only the utilization of transboundary waters, but all activities that may influence the conditions of those waters (e.g., the use of pesticides in agriculture). The only difference is that, while the adoption of an ecosystem approach can be *inferred* from a systemic interpretation of the UN Convention,¹⁰⁵ the ECE Convention *expressly* makes reference to this approach in Article 3(1)(i). According to this provision, basin states must take all appropriate measures to ensure that “sustainable water-resources management, including the application of the ecosystems approach, is promoted.” Of course, the ecosystem approach is also implicit in various other provisions of the ECE Convention.¹⁰⁶

2.2.3 Substantive Rules and Principles

The main substantive rule of the ECE Convention is the no-harm rule, under which parties must “take all appropriate measures to prevent, control and reduce any transboundary impact.”¹⁰⁷

⁹⁷ Convention on the Protection of the Rhine, 12 Apr. 1999 (in force 1 Jan. 2003), <http://www.iks.org/index.php?id=327> (“Rhine Convention”).

⁹⁸ Agreements on the Protection of the Rivers Scheldt and Meuse, 26 Apr. 1994, 34 I.L.M. 851 (1995). *See* A. Gosseries, *The 1994 Agreements Concerning the Protection of the Scheldt and Meuse Rivers*, 4 EUR. ENVTL. L. REV. 9 (1995).

⁹⁹ Agreement between the Government of the Republic of Estonia and the Government of the Russian Federation on Cooperation in the field of Protection and Sustainable Use of Transboundary Watercourses, 20 Aug. 1997, <http://www.envir.ee/58744>.

¹⁰⁰ Agreement between Russia and Kazakhstan Concerning the Use and Protection of Transboundary Waters, 27 Aug. 1992, <http://www.transboundarywaters.orst.edu>.

¹⁰¹ Agreement between Ukraine and the Russian Federation on transboundary waters, 22 Nov. 1992, <http://www.unece.org/env/water/cwc/legal.htm>.

¹⁰² *See* Amendment to Articles 25 and 26 of the Convention, U.N. Doc. ECE/MP.WAT/14 (12 Jan. 2004).

¹⁰³ *See* Status of Ratification of the Amendments to the ECE Convention, <http://www.unece.org/env/water/status/amend.htm>.

¹⁰⁴ ECE Convention, *supra* note 4, Article 1(1).

¹⁰⁵ *See* UN Convention, *supra* note 1, Articles 1(1), 5, 6(a)-(d), (f), 7, 9(1), 10, 11, 20-24.

¹⁰⁶ *See*, e.g., ECE Convention, *supra* note 4, Article 2(1), (2)(b), (d).

¹⁰⁷ *Id.* Article 2(1).

In particular, under Article 2(2)(a)-(d), of the ECE Convention, parties must act diligently to: a) “prevent, control and reduce pollution of waters causing or likely to cause transboundary impact;” b) “ensure that transboundary waters are used with the aim of ecologically sound and rational water management, conservation of water resources and environmental protection;” c) “*ensure that transboundary waters are used in a reasonable and equitable way*, taking into particular account their transboundary character, in the case of activities which cause or are likely to cause transboundary impact;” and d) “ensure conservation and, where necessary, restoration of ecosystems.” In addition, the ECE Convention incorporates and regulates the application of basic principles of environmental law: the precautionary principle, the polluter-pays principle, and the principle of sustainable development.¹⁰⁸ The ECE Convention also identifies the relevant legal, administrative, economic, financial and technical measures that would be considered appropriate for a state to adopt to prevent, control, and reduce transboundary impact (e.g., application of low- and non-waste technology, licensing procedures, environmental impact assessments, and contingency planning).¹⁰⁹ Such measures, as listed under the ECE Convention, may be useful to guide states in interpreting and implementing the no-harm rule under UN Convention.

While the ECE Convention incorporates the principle of reasonable and equitable use,¹¹⁰ its emphasis is on the no-harm rule and on the establishment of several policy instruments that enable countries to avoid causing “any significant adverse effect on the environment resulting from a change in the conditions of transboundary waters caused by a human activity, the physical origin of which is situated wholly or in part within an area under the jurisdiction of a Party, within an area under the jurisdiction of another Party.”¹¹¹ Conversely, the UN Convention contains a duty of due diligence in the prevention of transboundary harm,¹¹² incorporates the ecosystem approach, and provides for environmental protection and sustainable use of transboundary water resources, all around the central principle of equitable and reasonable use.

2.2.4 Implementation Instruments

Institutional Arrangements

The ECE Convention *requires* states to enter into bilateral or multilateral agreements or other arrangements, where these do not yet exist, or adapt existing ones, where necessary to eliminate the contradictions with the basic principles of the convention. The UN Convention, in turn, preserves

¹⁰⁸ *Id.* Article 2(5).

¹⁰⁹ *See id.* Article 3.

¹¹⁰ *See id.* Article 2(2)(c).

¹¹¹ *Id.* Article 1(2).

¹¹² UN Convention, *supra* note 1, Article 7.

the negotiating freedom of states and only *recommends* the adjustment of existing agreements to its provisions and the application of its basic principles in future treaties.¹¹³

In addition, parties to the ECE Convention *must* establish joint bodies, which may be in charge, for example, of elaborating water quality and emission standards, establishing warning and alarm procedures, or managing data and information.¹¹⁴ Pursuant to the UN Convention, states are under a general obligation to cooperate and “*may consider* the establishment of joint mechanisms or commissions, as deemed necessary by them.”¹¹⁵ Hence, the UN Convention’s recommendation in regards to the adoption of joint governance bodies is more flexible than the strict obligation on the establishment of institutional arrangements under the ECE Convention.

The ECE Convention also provides for an institutional framework to implement and develop the convention’s principles. A Meeting of the Parties is responsible for defining and reviewing activities and policies, as well as for sharing information and experience on the negotiation and implementation of agreements concerning transboundary waters.¹¹⁶ The Meeting of the Parties is held every three years, wherein the parties set their programme of work for the next three or more years and discuss the adoption of protocols, amendments and annexes to the convention. There have been four Meetings of the Parties to the ECE Convention since its entry into force.¹¹⁷ Working Groups provide support to the Meeting of the Parties. These groups develop new policies, strategies, and methodologies to protect transboundary waters,¹¹⁸ organize workshops and conferences, and propose training and capacity-building programs. A Secretariat is hosted by UNECE and coordinates the activities undertaken pursuant to the convention.¹¹⁹ More recently, the International Water Assessment Centre was established to provide technical and scientific assistance to parties, along with a legal board and an advisory service.

The UN Convention contains no provision on governance mechanisms. As aforementioned, the convention was drafted to be implemented mainly through the adoption of basin- or project-specific agreements and, if needed, resort to dispute settlement procedures. We refrain from criticizing this approach in this paper, but highlight the excellent results that have been achieved through the creation and progressive development of governance and institutional arrangements designed specifically to support the implementation of the ECE Convention. Once the UN Convention comes into force, it will be for parties to decide whether an amendment creating a conference of the parties and a secretariat would be appropriate or not.

¹¹³ *Id.* Article 3.

¹¹⁴ ECE Convention, *supra* note 4, Article 9.

¹¹⁵ UN Convention, *supra* note 1, Article 8(2) (*emphasis added*).

¹¹⁶ See ECE Convention, *supra* note 4, Article 17.

¹¹⁷ See the convention’s website for more information on these meetings and programmes of work, <http://www.unece.org/env/water/welcome.html>.

¹¹⁸ See *supra* notes 85 & 88.

¹¹⁹ See ECE Convention, *supra* note 4, Article 19.

Monitoring and Assessment

The ECE Convention obliges parties to adopt and implement joint monitoring programmes and agree on the parameters and pollutants to be covered by such programmes. States are also obliged to exchange data on environmental conditions and management measures applied to transboundary waters.¹²⁰ As mentioned before, the text of the UN Convention does not require parties to establish joint monitoring programmes, but it does include a duty on regular information exchange among basin states, as well as procedural duties that must precede the implementation of certain planned measures (e.g., notification to all states concerned for them to be aware of major water-related projects, with available environmental studies attached).¹²¹ Both conventions have equivalent provisions on emergency prevention and mitigation, obliging states to notify other potentially affected countries of any emergency situation and requiring riparians to consult with one another on the need for basin-wide joint contingency planning and implementation.¹²²

Compliance and Enforcement

A number of provisions in the ECE Convention seek to address compliance and enforcement issues. In addition to the monitoring and assessment requirements and the institutional framework set out above, the parties are obliged to “cooperate in the conduct of research into and development of effective techniques for the prevention, control and reduction of transboundary impact.”¹²³ Moreover, under the Protocol on Water and Health, the UNECE has drafted a compliance review mechanism, proposing the establishment of a compliance committee to review submissions of non-compliance from states, the public or the Secretariat. Various powers would be available to the committee to address cases of non-compliance, including providing financial and technical assistance, issuing cautions and declarations of non-compliance, publishing cases of non-compliance, and suspending special rights and privileges accorded to parties to the protocol.¹²⁴

As noted above, the UN Convention provides little in the way of compliance provisions.

¹²⁰ See *id.* Articles 11&13.

¹²¹ UN Convention, *supra* note 1, Articles 9, 11, 12.

¹²² See *id.* Article 33; ECE Convention, *supra* note 4, Articles 14-15. In addition, the parties to the ECE Convention have developed Model Provisions on Transboundary Flood Management, ECE/MP.WAT/2006/4 (2006).

¹²³ ECE Convention, *supra* note 4, Articles 5 and 12.

¹²⁴ UNECE/WHO, *Establishing a Compliance Procedure under the Protocol on Water and Health*, UN Doc. MP.WAT/WG.4/2004/7, 6 Oct. 2004, <http://www.unece.org/env/documents/2004/wat/wg.4/mp.wat.wg.4.2004.7.e.pdf>.

Public Participation

The ECE Convention requires parties to ensure that “information concerning the conditions of the transboundary waters, measures taken or planned to be taken to prevent, control and reduce transboundary impact, and the effectiveness of those measures, is made available to the public.”¹²⁵ As an implementation measure, the UNECE has developed a guidance document on public participation.¹²⁶ The UN Convention does not provide explicitly for public participation, but incorporates the non-discrimination rule, as explained above.

2.2.5 Dispute Settlement Mechanisms

Similar provisions relating to dispute settlement are found in both the UN Convention and the ECE Convention. Under both conventions, states must resort to peaceful means to settle their disputes and may agree to submit them to arbitration or the International Court of Justice.¹²⁷ Annexes to each convention establish the procedural aspects of Arbitration.

Dispute settlement may be one area where the UN Convention provides more detail than the ECE Convention. Where states fail to resolve a controversy within a certain period, the UN Convention *requires* parties to set up a third-party fact-finding commission, responsible for providing “recommendations as it deems appropriate for an equitable solution of the dispute”.¹²⁸ Parties must consider the commission’s recommendations in good faith, but do not necessarily have to implement them.

2.2.6 Conclusion

The ECE Convention is a more sophisticated instrument than the UN Convention and has the advantage of having been in force for over 10 years. The ECE Convention has a similar scope to the UN Convention, but the former is more detailed than the latter in many aspects. As such, the ECE Convention could provide states with important lessons on how to implement the more general provisions of the UN Convention. Non-ECE countries may, however, be more willing to sign up to the latter UN Convention, due to a corresponding reluctance to sign up to the stricter provisions contained in the ECE Convention. Let us recall that the ECE Convention is mandatory with respect to the establishment of joint bodies and the need for existing and future sub-regional

¹²⁵ ECE Convention, *supra* note 4, Article 16(1).

¹²⁶ UN ECE/UNEP Network of Experts on Public Participation and Compliance, Water Management: Guidance on Public Participation and Compliance with Agreements, March 2000, <http://www.unece.org/env/water/publications/documents/guidance.pdf>.

¹²⁷ UN Convention, *supra* note 1, Article 22.

¹²⁸ *Id.* Article 33.

agreements among parties to be compatible with the convention's basic principles and rules. Ratifying and implementing the UN Convention could thus be seen as a first, but extremely important, step in the long process of transboundary water cooperation, as basin countries prepare to move towards the more developed schemes of joint management envisioned under the ECE Convention. The two conventions, therefore, are *not* mutually exclusive and in many ways supplement each other. Each has a crucial role to play to improve global freshwater governance and support interstate cooperation in the field.

3. EU STATE OPINION TOWARDS THE UN CONVENTION

3.1 COMMENTS AND OBSERVATIONS OF STATES TO THE DRAFT UN CONVENTION

Many EU countries participated actively in the drafting process of the UN Convention, recognizing the need to codify and develop international water law. From the beginning, states such as Austria, Finland, France, Germany, Hungary, the Netherlands, Poland, Spain, and Sweden, submitted comments and observations focused on the scope of the work to be carried out by the International Law Commission.¹²⁹ In 1991, the commission adopted a first set of draft articles on the law of the non-navigational uses of international watercourses.¹³⁰ Again, several EU member states submitted comments and observations, including Denmark, Finland, Germany, Greece, Hungary, Netherlands, Poland, Spain, Sweden, and the United Kingdom.¹³¹ All those countries were supportive of the first draft of the future convention. Germany, for example,

[Attached] particular importance to the subject ... not only because of its geographical situation in the centre of Europe, but especially in view of the fact that it shares several major international watercourses.... *[T]he draft articles also meet a global need for regulation in this matter*, owing to the fact that since the Second World War the general use of watercourses has been the focus of attention, pushing navigational needs into the background.¹³²

Similarly, the Nordic countries recognized “the importance of legal problems relating to the use of international watercourses and the need to coordinate work carried out by many international organs.”¹³³ The United Kingdom also noted that, while it is not a major international watercourse

¹²⁹ U.N. Doc. A/CN.4/294 and Add. 1, *supra* note 42; *Replies of Governments to the Commission's Questionnaire*, 2 Y.B. Int'l L. Comm'n 253, U.N. Doc. A/CN.4/314; *Replies of Governments to the Commission's Questionnaire*, 2 Y.B. Int'l L. Comm'n 178, U.N. Doc. A/CN.4/324.

¹³⁰ *Text of the draft articles provisionally adopted by the Commission on first reading, in Report of the International Commission to the General Assembly on the work of its forty-third session*, U.N. GAOR Supp. (No. 10), 1, U.N. Doc. A/46/10, reprinted in [1991] 2 Y.B. Int'l L. Comm'n 1, U.N. Doc. A/CN.4/SER.A/1991/Add.I (Part 2), at 66 (“1991 ILC Draft Articles”).

¹³¹ *Comments and Observations from Governments*, [1993] 2 Y.B. Int'l L. Comm'n 145, U.N. Doc. A/CN.4/447 and Add.1-3.

¹³² *Id.* at 151 (*emphasis added*).

¹³³ *Id.* at 164.

state, it welcomed the draft articles as “a valuable contribution to the international protection of the environment.”¹³⁴

Pursuant to these and other observations received from states, in 1994, the ILC concluded a revised draft of the future convention—referred herein as the 1994 ILC Draft Articles.¹³⁵ In regards to these revised articles, Finland reiterated that they “would contribute considerably to the development of international law concerning the non-navigational uses of international watercourses.”¹³⁶ In addition, Finland, Hungary, and Portugal pointed to the need to harmonise the provisions of the 1994 ILC Draft Articles with those of the ECE Convention¹³⁷ and of the Espoo Convention.¹³⁸ To Finland and Portugal the final articles should also reflect the principles of sustainable development and the polluter-pays and precautionary principles.¹³⁹

3.2 NEGOTIATING POSITIONS WITHIN THE UN GENERAL ASSEMBLY

The discussions then moved to the UN General Assembly for the elaboration of a framework convention on the basis of the 1994 ILC Draft Articles and in light of another round of comments and observations from states on the revised draft.¹⁴⁰ Among EU member states, Austria, Belgium, Czech Republic, France, Finland, Germany, Greece, Hungary, Italy, Netherlands, Slovakia, Spain, and United Kingdom engaged in negotiations for this phase of the drafting process. During the negotiations three groups of states were discernable. The most active EU states, that is, the Czech Republic, France, Slovakia, and Spain, belonged to the “upstream” group; Greece, Hungary, the Netherlands, and Portugal were part of the “downstream group,” while Finland and Germany joined the “mixed-motive” group. The “upstream” group can be categorised as the least cooperative group, and are likely to attempt to prevent the adoption of watercourse agreements or weaken the obligation contained therein. In contrast, the downstream states are more interested in cooperation and reaching agreement. The mixed-motive group tend to push forward the process and are likely to come out in favour of more environmental protection.¹⁴¹

¹³⁴ *Id.* at 168.

¹³⁵ 1994 ILC Draft Articles, *supra* note 34.

¹³⁶ *Comments and Observations Received From States, in Report of the Secretary-General on Draft Articles on the Law of the Non-Navigational Uses of International Watercourses*, U.N. Doc. A/51/275, at 17.

¹³⁷ ECE Convention, *supra* note 4.

¹³⁸ Espoo Convention, *supra* note 26.

¹³⁹ U.N. Doc. A/51/275, *supra* note 132, at 10, 11, 13-14.

¹⁴⁰ G.A. Res. 49/52, U.N. Doc. A/RES/49/52 (9 Dec. 1994).

¹⁴¹ Schroeder-Wildberg, E., THE 1997 UN WATERCOURSES CONVENTION: BACKGROUND AND NEGOTIATIONS, Working Paper on Management in Environmental Planning 04/202, http://hydroaid.tinext.net/FTP/Data_Research/E.%20Schroeder-Wildberg-The%201997%20Int%20Watercourse%20Convention.pdf.

3.3 VOTING RECORD OF THE UN GENERAL ASSEMBLY

Most of the articles of the draft convention were adopted with little or no discussion, apart from Articles 3, 5-7, and 33. Among EU countries, France maintained that Article 3 “constituted a limitation on the freedom of states to enter into future watercourse agreements and the common interpretation given to it was insufficient to remove the ambiguity on that point.”¹⁴² In view of France’s comments, it is worth clarifying that, as adopted, Article 3 leaves no doubt in regards to the status of the UN Convention in relation to regional and sub-regional agreements basin states may adopt to regulate their rights and interests in more details. The convention only *encourages* states to follow its provisions, but admits that states may choose to deviate from such rules. The only limitation is that partial agreements between only some of the basin states do not significantly interfere with the equitable and reasonable rights of third basin states arising under the convention. Such limitation, of course, derives directly from the principle of reasonable and equitable utilization and does not unduly restrict basin states’ freedom to negotiate future watercourse agreements. Perhaps for this reason 36 states voted in favour of the Article, including Belgium, Denmark, Finland, Germany, Greece, Hungary, Italy, Netherlands, Spain, and the United Kingdom. France voted against, and Austria, Czech Republic, Portugal, and Slovakia abstained. In any case, all these states are parties to the ECE Convention, which truly limits their freedom when *requiring* them to adopt agreements aimed at preventing significant transboundary harm — agreements that *must be in conformity* with the convention’s provisions.

The package formed by Articles 5-7 was adopted with 38 in favour; 23 abstentions; and 4 against. Austria, Belgium, Denmark, Finland, Germany, Hungary, Italy, Netherlands, Portugal, and the United Kingdom all voted in favour; the Czech Republic, Greece, Slovakia, and Spain abstained; France again voted against, attempting to “ensure at all costs that disputed articles were not adopted, as their adopting could have adverse repercussions for the future of the convention.”¹⁴³ The French delegation also explained that Article 7 “provided the beginnings of a regime of responsibility without defining either its terms or its scope, which was unlikely to resolve possible disputes between riparian States and could even complicate them.”¹⁴⁴

China requested a vote on Article 33 relating to dispute settlement and its annex. Among the 33 countries voting in favour of the text were Austria, Belgium, Czech Republic, Denmark, Finland, Germany, Greece, Hungary, Italy, Netherlands, Portugal, Spain, and the United Kingdom. Slovakia

¹⁴² U.N. GAOR, 51st Sess., 62nd mtg., 3, UN Doc. A/C.6/51/SR.62 (4 Apr. 1997), Para. 43. .

¹⁴³ *Id.* Para. 14.

¹⁴⁴ *Id.*

abstained and France voted against the text under the argument that Article 33 was at variance to the purpose of a *framework* convention.¹⁴⁵

Finally, a recorded vote was taken on the draft convention as a whole, which resulted in 42 states voting in favour, 3 voting against, and 19 abstentions. *France was the only EU country to vote against the text as a whole*,¹⁴⁶ arguing that “the point of order it had raised had been ignored; speakers had been denied the opportunity to explain their vote before the voting; and the UN Convention had been adopted without the two-thirds majority specified in the rules of procedure.”¹⁴⁷ This rule, however, is “usually waived when negotiations were prolonged and there was a deadline for the conclusion of the discussion.”¹⁴⁸ France essentially criticized the manner in which the work had been carried out and the procedure used to negotiate the adoption of the draft convention.¹⁴⁹ But France was standing alone among its co-member states: only Slovakia and Spain abstained. Austria, Belgium, Czech Republic, Denmark, Finland, Germany, Greece, Hungary, Italy, Netherlands, Portugal, and the United Kingdom all voted in favour of the text.¹⁵⁰ Portugal finally noted that the UN Convention “represented a milestone in the process of codification and progressive development of international law relating to the uses of international watercourses and to the uses of water in general, as well as to cooperation in that field, bearing in mind in particular limitation, both quantitative and qualitative, to which waters and their ecosystem were subject.”¹⁵¹ The above sentiment was endorsed by the statements from the Czech Republic, Hungary, and the Netherlands.¹⁵²

The UN Convention was ultimately adopted by the UN General Assembly on May 21 1997, with 103 states in favour; 27 abstentions; and 3 votes against. Among EU states, the following 23 countries approved the convention: Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Sweden, and United Kingdom. No EU state

¹⁴⁵ *Id.* at Para. 86. The debate in the Working Group of the Whole had shown that there were two diverse opinions. One opinion that Article 33 should simply provide that any disputes should be settled peacefully; thus leaving the states to choose the appropriate method of dispute settlement. It was argued that any compulsory binding procedure would be counter-productive by discouraging a number of states from joining the Convention. The other opinion laid preference on clearly spelled out compulsory and binding dispute settlement procedures. Such an approach, it was maintained, would promote the effective implementation of the Convention. In addition, the supporters of a compulsory approach, felt that a number of provisions in the Convention were presented in general terms, and if the parties could not agree on their exact meaning, then there needed to be a mechanisms by which to resolve any ambiguities at a later stage. Ultimately, a compromise solution was found whereby the findings of any third-party fact-finding commission would not be binding on the parties. UN Convention, *supra* note 1, Article 33(8).

¹⁴⁶ U.N. GAOR, 51st Sess., 62nd mtg., 3, UN Doc. A/C.6/51/SR.62/Add.1 (4 Apr. 1997).

¹⁴⁷ UN Doc. A/C.6/51/SR.62, *supra* note 153, Para.106.

¹⁴⁸ See U.N. Doc. A/C.6/51/SR.62/Add.1, *supra* note 155.

¹⁴⁹ *Id.* Para.20.

¹⁵⁰ *Id.* Para.2.

¹⁵¹ *Id.* 158, Para.29

¹⁵² *Id.* Para 23, 30 & 37, respectively.

voted against it and only three states abstained: Bulgaria, France, and Spain.¹⁵³ During the voting procedures, Spain mentioned the need for a more effective balance between Articles 5 and 6, and Article 7 as the reason for its abstention.¹⁵⁴ For France, “the haste in negotiations had created serious procedural discrepancies which affected the credibility of the resulting text.”¹⁵⁵ Slovakia and the Czech Republic also made comments in the General Assembly, reiterating that the UN Convention was an important step in the codification and progressive development of international law in the field.¹⁵⁶

Today, however, in a changed political scenario in Europe, it may be argued that no EU member state has valid reasons to oppose the UN Convention. The only opposing opinions among EU countries that were registered in the voting records came from France and Spain. The French opposition, however, was focused on voting procedures, not on substantial issues. Spain — arguably adopting an upstream stance — emphasized the need for a more effective balance between Articles 5-7. But in recent years, Spain has shown a less “upstream” stance: it has become a party to the ECE Convention and has concluded a bilateral agreement with Portugal that enshrines many of the principles contained in both the ECE and UN Conventions.¹⁵⁷ Both France and Spain have been implementing the WFD, which contains much more detailed and stringent provisions than the UN Convention.

3.4 RATIFICATION AND SUBSEQUENT STATE POSITIONS

At present, there are 16 signatories to the UN Convention and 15 state parties.¹⁵⁸ Within the EU, Luxembourg has signed the convention, but never completed the ratification process. Finland, Hungary, Germany, the Netherlands, Norway, Portugal, and Sweden are already parties. In becoming a party, Finland explained that it had played an active role in the negotiations for the development of the UN Convention.¹⁵⁹ Furthermore, the UN Convention is consistent with the ECE Convention and with Finland’s bilateral agreements with Norway, Russia, and Sweden. Ratification did not, therefore, require any additional legislation. Given recent developments within the EU region, such as the adoption and implementation of both the ECE Convention and the

¹⁵³ Press Release, General Assembly, General Assembly Adopts Convention on the Law of Non-Navigational Uses of International Watercourses, U.N. Doc. GA/9248 (21 May 1997).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ Agreement on Cooperation for the Protection and Sustainable use of Waters of the Spanish-Portuguese Hydrographic Basins, 30 November 1998, available at <http://faolex.fao.org/faolex/index.htm>.

¹⁵⁸ *Multilateral Treaties Deposited with the Secretary-General*,

<http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXXVII/treaty42.asp>.

¹⁵⁹ See Ulkoasianministeriö, *Yleissopimus Kansainvälisten Vesistöjen Muuhun Kuin Liikennekäyttöön Sovellettavista Säännöistä Allekirjoittaminen*, (9 Oct. 1997) (on file with author); Ulkoasianministeriö, *Yleissopimus Kansainvälisten Vesistöjen Muuhun Kuin Liikennekäyttöön Sovellettavista Säännöistä*, Hyväksyminen, (9 Jan. 1998) (on file with author).

WFD, the Finnish justifications for becoming party to the convention would appear to hold true for most EU member states. Again, because EU countries are already subject to stricter provisions under the WFD and the ECE Convention, *ratifying the convention does not represent an additional burden, but it would further EU's share of responsibility for the codification and development of international water law, as well as reflect its member states' commitment to sustainability and improved global environmental governance.*

4. EU EXTERNAL RELATIONS AND THE UN CONVENTION

This section analyses the various policy instruments that inform international relations of the EU and its member states and their role within the community of nations in regards to the world's freshwater resources, environmental protection, and development cooperation. The entry into force of the UN Convention would help achieve the key water-related objectives stated in such instruments, by contributing to enhanced transboundary freshwater management in non-EU members, in particular developing countries.

4.1 EU ENVIRONMENTAL AND WATER POLICIES

The Sixth Community Environment Action Programme is a general framework for Community action on the environment, defining key objectives, priority areas, targets and timetables, to be attained by 2012.¹⁶⁰ This programme mandates, for example, “the integration of the concepts and approaches of the [WFD] ... in other Community policies.”¹⁶¹ In this sense, the UN Convention could serve as a platform for the EU and its member states to share their knowledge and experience in implementing the WFD with the rest of the world. The programme also commends “the *positive and constructive role of the European Union as a leading partner in the protection of the global environment* and in the pursuit of a sustainable development.”¹⁶² In light of this role, priority actions on international issues are to include:

- (a) integrating environment protection requirements into all the Community's external policies, including ... development cooperation...;
- (c) ... strengthening international environmental governance by the gradual reinforcement of the multilateral cooperation...;
- (d) aiming for swift ratification, effective compliance and enforcement of international conventions and agreements relating to the environment where the Community is a Party...;
- (i) promoting cross-border environmental cooperation with neighbouring countries and regions;
- (j) promoting a better policy coherence by linking the work done within the framework of the different conventions....¹⁶³

¹⁶⁰ Decision No. 1600/2002/EC of the European Parliament and of the Council Article 1 (22 July 2002), 2006 O.J. (L 242/1), available at http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_242/l_24220020910en00010015.pdf.

¹⁶¹ *Id.* Article 7(2)(e).

¹⁶² *Id.* Article 2(6) (*emphasis added*).

¹⁶³ *Id.* Article 9(a), (c), (d), (i), (j).

The UN Convention would further the Sixth Community Environment Action Programme by serving as the *link between environmental and development cooperation objectives related to transboundary freshwater resources*; strengthening *freshwater and environmental governance at the global level*; promoting *transboundary water cooperation* between EU and non-EU states not parties to the ECE Convention; and *supporting the implementation of other multilateral environmental agreements* (e.g., in regards to inland water biodiversity or adaptation to the effects of climate change on freshwater resources).

4.2 EU DEVELOPMENT COOPERATION POLICIES

The EU accounts for 56 percent of the total development aid, making it the world's foremost donor. In regulating Community action in the sphere of development cooperation, Article 177 of the EC Treaty identifies as major goals of foreign aid policies “the sustainable economic and social development of the developing countries,” “the smooth and gradual integration of the developing countries into the world economy,” and “the campaign against poverty in the developing countries.”¹⁶⁴ Specifically in regards to freshwater-related development aid, not long after the approval of the UN Convention in 1997, the EU adopted the Guidelines on Water Resources Development Cooperation, which are examined below.

4.2.1 EU Guidelines for Water Resources Development Cooperation¹⁶⁵

In 1998, the EU Guidelines on Water Resources Development Cooperation¹⁶⁶ were published, laying down a strategic approach for the equitable, efficient, and sustainable management of water resources. All those involved in EU development cooperation in water management, including both public and private sectors, were the intended audience. These guidelines make *express reference to the UN Convention* as “a basis for establishing common rights in transboundary rivers and a framework for the management of international river systems.”¹⁶⁷ Indeed, the UN Convention could be an implementing instrument of the guidelines’ call on governments to “work towards providing a sound legal and policy framework for water resources management.”¹⁶⁸

These Guidelines have been followed, but not replaced, by other EU instruments guiding water-related international assistance, and which are discussed in the next sections. But the 1998 Guidelines remain valid, as an express reference to them as a source of additional information on

¹⁶⁴ EC Treaty, *supra* note 81.

¹⁶⁵ EU Guidelines and EC Communications are policy documents. Therefore, while there is no legal sanction for failure to implement such commitments, there would be certain political consequences if EU member states failed to respect the content of such documents.

¹⁶⁶ European Commission, Guidelines for Water Resources Development Cooperation: Towards Sustainable Water Resources Management (1998).

¹⁶⁷ *Id.* at 36 (*emphasis added*).

¹⁶⁸ *Id.* at 12.

water and sanitation has been retained in the Programming Guide for Strategy Papers — a 2006 guiding document for desk officers and delegations in the development of country and regional water and sanitation development cooperation strategies.¹⁶⁹

4.2.2 Communication on Water Management in Developing Countries

The EU 2002 Communication on Water Management in Developing Countries aims to contribute to ensuring “adequate supplies of safe water ... to everyone in the world today, while preserving the quantity and quality of the resource to sustain essential ecosystem functions and ensure supplies for future generations.”¹⁷⁰ The communication signifies a shift away from the traditional technically based solutions of former EU water development policies, to a programme approach with greater emphasis on social and environmental concerns, as well as the improvement of water resources management at all the national and international levels.

The communication maintains that water is a cross-sectoral issue to be mainstreamed within development policies associated with poverty reduction. Hence, the communication recognises the central role water plays in development issues, in particular for securing the achievement of the Millennium Development Goals (MDGs). Water-related targets under the MDGs are in the core of the overall development objective of reducing by at least one half those living in extreme poverty by 2015.¹⁷¹ The EU thus endorses the need to reduce unsustainable exploitation of water resources through water development cooperation policies centred on the integrated management of freshwater resources and river basins. More specifically, such policies are to support developing countries in adopting and implementing basin-wide, comprehensive, and integrated water resources management in a transboundary context.¹⁷² Indeed, integration of upstream and downstream areas within transboundary river basins is central to the application of the core principles of sustainable, equitable and participatory human and social development.¹⁷³ As the communication notes,

¹⁶⁹ A. Liebaert & M. Walshe, Programming Guide for Strategy Papers (2006), http://ec.europa.eu/development/How/iqsg/docs/fiches_pdf/F13_water_fin.pdf.

¹⁷⁰ Communication from the Commission to the Council and the European Parliament on Water Management in Developing Countries: Policy and Priorities for EU Development Cooperation, COM(2002) 132 final (12 Mar. 2002), available at http://europa.eu.int/eur-lex/en/com/cnc/2002/com2002_0132en01.pdf.

¹⁷¹ *Id.* at 3 & 6.

¹⁷² In this sense, “integrated management requires that water resources within a given river basin or lake catchment area are managed in a holistic manner balancing the water needs of the aquatic environment and the different water uses. *An integrated approach also requires that all waters including groundwater and coastal waters are taken into account. This applies particularly to rivers which cross national boundaries and to lakes bordered by several different countries.*” *Id.* at 7 (*emphasis added*).

¹⁷³ *Id.*

Integrated Water Resources Management and River Basin Management are central principles of EU policy.... Transboundary cooperation over water resources is becoming increasingly important in many developing regions, where growing population and changing consumption patterns create tensions on both water availability and quality among upstream and downstream users. *The challenge in sharing waters is to avoid conflict and promote peaceful co-operation between different interests*, both within countries and between them.¹⁷⁴

The communication explicitly recognises that *a higher profile for water is required on the European Union's development cooperation agenda*, identifying *transboundary cooperation as a priority area*. Accordingly, the Communication on Conflict Prevention clarifies that, “in the short-term, measures must be built around mechanisms which ensure respect for those national and international agreements on which water-sharing rights are generally based.... The commission will *support regional actions aiming at a fair management of shared water resources*.”¹⁷⁵ The communication therefore directly calls on EU member states, as donors on water development cooperation, to support mechanisms that may improve regional cooperation. The UN Convention, of course, is a key example of such mechanisms. It is, in fact, the only United Nations policy instrument guiding cooperation among basin states at the global level. Once in force, the UN Convention would provide a framework for transboundary IWRM and thus play a key role in meeting the above-stated objective of the “fair management of shared water resources.”

In addition, broad-based ratification of the UN Convention could support the improved collaboration between bilateral and multilateral donors and international organisations. As the Communication on Water Management in Developing Countries points out, coordinated action among donors “is particularly essential in the context of management of transboundary waters.”¹⁷⁶

4.2.3 EU Water Initiative

The EU Water Initiative (EUWI) was established in 2004 as a mechanism for implementing EU water development policy, in support of the water-related targets under the MDGs and according to the framework set out in the above guidelines and communications.¹⁷⁷ Integrated water resources management is placed at the heart of the initiative:

¹⁷⁴ *Id.* at 9 (*emphasis added*).

¹⁷⁵ Communication on Conflict Prevention, COM(2001) 211 final (11 Apr. 2001), at 18, http://ec.europa.eu/comm/external_relations/cfsp/news/com2001_211_en.pdf.

¹⁷⁶ Communication on Water Management in Developing Countries, *supra* note 165, at 18.

¹⁷⁷ Commission Communication on the future development of the EU Water Initiative and the Modalities of the Water Facility for ACP countries, COM(2004) 43 final (26 Jan. 2004).

Water resources management needs to be addressed at all levels, including the natural river, lake or groundwater basin. Integrated water resources management with strong stakeholder participation, a pro-poor emphasis, and gender sensitivity is a key approach to ensure the integration of water services within an overall water management framework. Integrated water resource management also provides *a framework to promote peace and security in transboundary water basins*. As such the EU also confirms its support for initiatives that promote regional co-operation and economic development in transboundary water courses.¹⁷⁸

Once in force, the UN Convention *would not replace or compete with the EUWI*. Rather, the UN Convention would *serve as a legal framework to strengthen the policy and institutional arrangements that are needed to enable the equitable use and development of shared freshwater resources, as well as to promote transboundary integrated river basin management in partner countries and regions*. Such arrangements include, for example, the development and implementation of integrated water resources management plans across borders. Nonetheless, the recent independent review of the EUWI concluded that, despite most discernable achievements of the initiative to date, such as creation of the EU Water Facility and the increased support to research, “the failure to contribute towards another key objective, namely the development of national IWRM plans ... provides less encouraging signals.”¹⁷⁹ In providing a framework for better water governance through regional and sub-regional cooperation on transboundary water management planning, the UN Convention adds value to the implementation of the EUWI and may foster better results regarding the development of national IWRM plans.

The convention lays out the minimum standards for cooperating over transboundary water resources, which to a large extent represent a global consensus in the field. Widespread support for the Convention would further encourage such cooperation given the convention’s role in supporting and framing legal and policy arrangements for transboundary waters at the basin level. Once in force, therefore, the UN Convention would provide *a framework by which to promote and measure better water governance through strengthened regional and sub-regional cooperation on water management issues, applying the integrated water resources management approach at a basin scale*.¹⁸⁰ In so doing, the convention would directly contribute to Goal 4 of the EUWI: “Strengthened co-operation through promoting river basin approaches in national and transboundary waters.”¹⁸¹ In pursuing Goal 4 of the EUWI, the EU “*confirms its support for initiatives that promote regional cooperation and economic development in transboundary water courses*.”¹⁸²

In addition, widespread support for the UN Convention amongst EU member states and the EC would bolster *political commitment to action and raise the profile of water and sanitation issues in the context of*

¹⁷⁸ *Id.*

¹⁷⁹ Review of the European Water Initiative (EUWI) Volume I: Main Report Final Report (2007), <http://www.euwi.net/index.php?main=8&work=shownews&id=112>, p 1.

¹⁸⁰ See EU Water Initiative, *Strategy for Development of the EUWI* (Revised Final Draft, version 3), at 4, available at http://www.siagua.org/siagua/documentos/directores_02_06/documentacion/documento6.pdf.

¹⁸¹ See EUWI webpage, at <http://www.euwi.net/index.php?main=1&sub=3&id=112>.

¹⁸² Secretariat of the EU water initiative, EU Water Initiative: Water for Life 5 (2004), available at <http://www.euwi.net/index.php?main=1&sub=1#237>.

poverty reduction efforts. As can be seen by the role of the WFD and the UNECE Convention, framework agreements related to the integrated management of water resources provide a central mechanism in the bid towards greater *coordination and cooperation of water-related interventions*. In particular, such coordination and cooperation reinforced by the UN Convention would support the transfer of knowledge and experiences between transboundary basins around the world (e.g. North-North, South-South, and North-South).¹⁸³ As a *global* framework, the convention could also serve as bridge between the EUWI and other water-related development cooperation processes, as well as non-EU donors. By providing a level playing field and laying down minimum standards upon which states should cooperate over their transboundary waters, the UN Convention could also provide a catalyst for increased funding in relation to transboundary water resources management.¹⁸⁴

4.2.4 The European Consensus

In December 2005, the EU signed a new statement on EU development policy, known as the “European Consensus.”¹⁸⁵ The consensus defines the framework for common principles within which the EU and its member states will implement their development policies. The main objective of these policies is to reduce poverty worldwide, in the context of sustainable development and in line with the Millennium Development Goals, including their water-related targets. With the European Consensus, *the EU confirmed its commitment to the MDGs*. Supporting appropriate mechanisms that, like the UN Convention, provide policy guidance to the integrated management of transboundary watersheds, would be in line with and reinforce such a commitment.

In this sense, the Compendium of Actions of the UN Secretary-General’s Advisory Board on Water and Sanitation¹⁸⁶ establishes a *direct link between the entry into force of the UN Convention and the achievement of the MDGs*. The Advisory Board was instituted as an independent body to guide the UN Secretary-General in pursuing the MDG target on water and sanitation. It is composed of renowned experts, world leaders, and government officials who seat on the Board not representing their governments or institutions, but as neutral advisors to the UN Secretary-General.¹⁸⁷ The Compendium of Action is a roadmap defining priority actions for the United Nations and its member states in pursuance of the MDG target on water and sanitation. It is so that, under

¹⁸³ *See id.*

¹⁸⁴ *Id.*

¹⁸⁵ European Parliament, Council & Commission, Joint Statement by the Council and the Representatives of the Member States meeting with the Council, the European Parliament and the Common on European Policy: “The European Consensus,” 2006 O.J. (C 46) 1.

¹⁸⁶ Hashimoto Action Plan, UN Secretary-General’s Advisory Board on Water and Sanitation, Compendium of Actions, http://www.unsgab.org/Compendium_of_Actions_en.pdf, p.9.

¹⁸⁷ *See* Advisory Board on Water and Sanitation webpage, http://www.unsgab.org/top_page.htm.

“Objective 2” of the compendium, *national governments are requested to ratify the UN Convention, as a legal basis for the application of IWRM to international river basins.*

4.2.5 Member States and Water Development Cooperation

Many member states are active in water development cooperation. For some countries water is an integral part of international aid policies (e.g., Portuguese development cooperation towards Mozambique). Other states, such as Austria, Denmark, France, Germany, Ireland, The Netherlands, Sweden, and the United Kingdom adopt their own strategy related to water issues.¹⁸⁸ Overall, there has been a *shift from technical solutions to a management focus* with emphasis on equity and sustainability.¹⁸⁹ Most countries pay *particular attention to the need for IWRM and emphasise the transboundary component.*

4.3 EU AND MULTILATERAL ENVIRONMENTAL AGREEMENTS

This section examines the legal basis for the EU to become party to the UN Convention, in light of its strong commitment to global environmental protection and focus on development assistance to transboundary IWRM. Under the EC Treaty, environmental Community policy is to contribute to “*promoting measures at international level to deal with regional or worldwide environmental problems.*”¹⁹⁰ In general, such policy will aim “*at strengthening international cooperation* in order to achieve a high level of protection.”¹⁹¹

In regards to development cooperation, the EU and its member states “*shall* comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.”¹⁹² This would be the case with the water-related targets under the Millennium Development Goals, for example. Finally, within its sphere of competence, the Community is to cooperate with third countries on both environmental and development cooperation matters and, with that purpose, may conclude agreements with non-EU countries.¹⁹³

Based on this mandate, *the EC has taken an active part in the negotiation, ratification, and implementation of numerous international agreements*, including a number of basin-specific treaties.¹⁹⁴ At the regional level, the EU became a party to the ECE Convention, in order to fulfil its commitment to

¹⁸⁸ Stockholm International Water Institute, *Water Management in Developing Countries: Policy and Priorities for EU Development Cooperation* (2001), at 19.

¹⁸⁹ Communication on Water Management in Developing Countries, *supra* note 165, at 19.

¹⁹⁰ EC Treaty, *supra* note 81, Article 174(1) (*emphasis added*).

¹⁹¹ Council Decision 95/308/EC, on the conclusion, on behalf of the Community, of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1995 O.J. (L 186) 42.

¹⁹² EC Treaty, *supra* note 81, Article 177(3).

¹⁹³ *Id.* Articles 174(4) & 181.

¹⁹⁴ See, e.g., Rhine Convention, *supra* note 98; Danube Convention, *supra* note 97. See also Council Decision 97/825/EC, 1997 O.J. (L 342) 18; Council Decision 2000/706/EC, 2000 O.J. (L 289) 30.

promoting the protection and sound use of transboundary freshwater resources and recognizing that doing so would help achieve the environmental objectives set out in the EC Treaty.¹⁹⁵ In addition, the EU has entered into a number of regional seas agreements,¹⁹⁶ as well as environment-related agreements at the regional and global levels.¹⁹⁷

Procedurally, *upon a proposal by the Commission, in consultation with the Parliament, and acting by a qualified majority*, the Council has the power to enter into international agreements on behalf of the EU with a view to attaining the environmental and development cooperation goals indicated above.¹⁹⁸ This applies to the UN Convention as it is open for signature by regional economic integration organisations such as the EU.¹⁹⁹ The UN Convention is thus a *mixed agreement*: both the EU and its member states share competence for and may thus become parties to it.²⁰⁰

CONCLUSION

While there are *no disadvantages* for EU countries to ratify the UN Convention, there are in fact *compelling reasons for them to do so in terms of positive outcomes that would derive to the European Union and its member states from the convention's entry into force and implementation*. There has been a long tradition of cooperation over transboundary waters within Europe, leading to the adoption of two relatively sophisticated regional instruments. The Water Framework Directive and the ECE Convention lay down comparatively detailed rules for the management of transboundary waters, strengthening cooperation and preventing conflict in the region. The institutional structure supporting these instruments ensures that they are constantly adapted to address gaps, weaknesses, and future challenges. A comparative analysis between each of these instruments and the UN Convention shows that they are in harmony with one another. One important difference, however, is in the degree of detail of the European instruments as opposed to the UN Convention. Such a difference is noteworthy for two reasons.

¹⁹⁵ See EC Treaty, *supra* note 81, Article 174.

¹⁹⁶ See, e.g., Convention for the Protection of the Marine Environment of the North East Atlantic, Sep. 22, 1992 (in force 25 Mar. 1998), *reprinted in* 32 I.L.M. 1069 (1993); Convention for the Protection of the Marine Environment of the Baltic Sea Area, Apr. 9, 1992 (in force 17 Jan. 17, 2000), <http://fletcher.tufts.edu/multi/texts/22los.txt>.

¹⁹⁷ See, e.g., TEIA Convention, *supra* note 90; United Nations Framework Convention on Climate Change, 9 May 2002 (in force 24 Mar. 1994), 31 I.L.M. 849 (1992); Convention on the Protection of the Ozone Layer, 22 Mar. 1985 (in force 22 Sep. 1988), 26 I.L.M. 1529 (1987); Aarhus Convention, *supra* note 75; Espoo Convention, *supra* note 26; Convention on Biological Diversity, 5 Jun. 1992 (in force 29 Dec. 1992), 31 I.L.M. 622 (1992); Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 14 Oct. 1994 (in force 14 Oct. 1994), 1954 U.N.T.S. 3 (1994).

¹⁹⁸ See EC Treaty, *supra* note 81, Articles 251(2)-(7) & 300(2)-(3).

¹⁹⁹ UN Convention, *supra* note 1, Article 35.

²⁰⁰ D. MCGOLDRICK, INTERNATIONAL RELATIONS LAW OF THE EUROPEAN UNION (1997)

- *Because EU countries must implement the WFD and the ECE Convention, becoming party to the UN Convention would not represent an added burden on them and would require little in terms of internal ratification measures and implementing legislation, as Finland has already underscored.*
- *The vast experience acquired through the implementation of the European instruments could guide non-EU states in applying the more general provisions of the UN Convention. The amendment to the ECE Convention allowing any UN member state to become a party to that convention is important in this regard. But until that amendment comes into force, or for countries in the initial stages of the transboundary IRBM process or not prepared to accept the more stringent provisions of the ECE Convention, ratifying the UN Convention might be seen as a stepping stone towards the adoption of more detailed agreements providing for the joint management of transboundary freshwater resources.*

There is no reason for EU member states to oppose the UN Convention and most of them have recognized the need to codify customary international water law during negotiations on the convention's text. The UN Convention will serve as *a solid and binding global legal framework to guide the cooperative management of transboundary waters*, as well as to *enhance coordination among international stakeholders*. EU development policy already makes a clear connection between alleviating poverty, achieving the MDGs, and ensuring that water is managed in an equitable and sustainable manner, with *the major challenge being at the transboundary level*. The EU Guidelines on Water Resources Development Cooperation, in particular, make *express reference* to the UN Convention as a widely accepted framework for facilitating *transboundary* integrated river basin management.

In becoming parties to the Convention, the EU and its member states would send a clear message on the importance of strengthening governance for the management of transboundary waters throughout the world. Once in force, the UN Convention could be applied:

- a) as a legal framework to support implementation of development cooperation by the EU and its member states; and
- b) as a platform for the EU and its members states to share with the rest of the world their knowledge and experience derived from the implementation of the WFD and the ECE Convention.

The UN Convention would inform, frame, and harmonise existing initiatives and programmes such as the EU Water Initiative and Sixth Community Environment Action Programme. Europe could play a leading role in bringing the convention into force. This would further the commitment by the EU and its member states to substantially contribute to the achievement of globally agreed goals and targets on sustainable development such as the Millennium Development Goals.